



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPU-DR MNU-DR FFL**

Introduction

This hearing was reconvened as a result of the Landlord's application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession for non-payment of rent pursuant to sections 46 and 55 based on a Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated May 6, 2022 ("10 Day Notice") pursuant to section 55;;
- a Monetary Order for unpaid rent and/or utilities pursuant to section 55; and
- authorization to recover the filing fee for the Application from the Tenant pursuant to section 72.

This hearing was reconvened from a non-participatory, *ex parte*, "direct request" proceeding. In an interim decision dated June 23, 2022 ("Interim Decision"), the presiding adjudicator determined that a participatory hearing was necessary to address questions that could not be resolved on the documentary evidence submitted by the Landlord. As a result, this hearing was scheduled and came on for hearing on October 31, 2022 at 9:30 am ("Adjourned Hearing"), to consider the Application. The Interim Decision, and Notices of Dispute Resolution Proceeding, were served on the parties by the Residential Tenancy Branch.

The Tenant did not attend the Adjourned hearing. I left the teleconference hearing connection open until 9:51 am in order to enable the Tenant to call into the Adjourned Hearing that was held by teleconference. An agent ("TC") of the Landlord attended the Adjourned Hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes were provided in the Notice of Dispute Resolution Proceeding for the Adjourned Hearing. I also confirmed from the teleconference system

that TC and I were the only ones who had called into this teleconference for the Adjourned Hearing.

At the Adjourned Hearing, TC stated the Notice of Dispute Resolution Proceeding for the original Hearing and the Landlord's evidence (collectively the "Original NDRP Package") was served on the Tenant's door on June 6, 2022. TC submitted into evidence a signed and witnessed Proof of Service on Form RTB-34 to corroborate his testimony. Based on the undisputed testimony of TC, I find the Original NDRP Package was served the Tenant pursuant to the provisions of sections 88 and 89 of the Act. Pursuant to section 90, I find the Tenant was deemed to have received the Original NDRP Package on June 9, 2022, being three days after posting of the Original NDRP Package on the Tenant's door.

TC stated the Tenant did not serve the Landlord with any evidence for this proceeding.

Issues to be Decided

Is the Landlord entitled to:

- an Order of Possession?
- a monetary order for unpaid rent and/or utilities?
- recover the filing fee for the Application from the Tenant?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

TC submitted into evidence a copy of the tenancy agreement and a three-page addenda, both dated July 3, 2020 and a tenancy show sheet (collectively the "Tenancy Agreement"), between the Landlord and the Tenant. The Tenancy Agreement states the tenancy commenced on July 23, 2020, for a fixed term ending July 31, 2021, with base rent of \$700.00 and \$60.00 for the water utility for a total rent of \$760.00 payable on the 1st day of each month. TC stated the water utility was for both water and sewer treatment charges.

Based on the foregoing, I find there was a tenancy between the Landlord and Tenant and that I have jurisdiction to hear the Application. The Tenant was to pay a security deposit of \$350.00 and a pet damage deposit of \$350.00 by July 21, 2020.

TC stated the Tenant paid the security and pet damage deposits and that the Landlord was holding them in trust for the Tenant. TC stated the Tenant abandoned the rental unit sometime in April 2022.

TC stated the Landlord served the 10 Day Notice on the Tenant's door on May 6, 2022. The 10 Day Notice stated the Tenant had total rental arrears of \$1,520.00 for the base rent and utilities as of May 1, 2022. . TC stated the rental arrears were calculated as follows:

Date	Rent and Utilities	Payment	Balance
01-Apr-22	\$760.00	\$0.00	\$700.00
01-May-22	\$760.00	\$0.00	\$1,400.00
Total	\$1,520.00	\$0.00	\$1,520.00

TC stated the Tenant did not make any payments whatsoever for the rental arrears for April and May 2022. TC stated he was unaware of the Tenant making an application for dispute resolution to dispute the 10 Day Notice.

Analysis

1. Landlord's Claim for Order of Possession

Sections 46(1), 46(2), 46(4) and 49(5) of the Act state:

- 46(1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.
- (2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (4) Within 5 days after receiving a notice under this section, the tenant may
 - (a) pay the overdue rent, in which case the notice has no effect, or

- (b) dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
 - (a) *is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*
 - (b) *must vacate the rental unit to which the notice relates by that date.*

[emphasis added in italics]

Based on the undisputed evidence of TC, the Landlord served the 10 Day Notice on the Tenant's door on May 6, 2022. Pursuant to section 46(4) of the Act, the Tenant had until May 11, 2022, to make an application for dispute resolution to dispute the 10 Day Notice. There is no evidence that the Tenant made an application for dispute resolution with the Residential Tenancy Branch to dispute the 10 Day Notice. As such, pursuant to section 46(5)(a), the Tenant was conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice. The 10 Day Notice stated the effective date for move out was May 16, 2022. Pursuant to section 46(5)(a) of the Act, the tenancy ended on May 16, 2022. TC stated the Tenant abandoned the rental unit sometime in April 2022.

Sections 55(2), 55(3) and 55(4) of the Act state:

- 55(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:
 - (a) a notice to end the tenancy has been given by the tenant;

- (b) *a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;*
 - (c) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
 - (c.1) the tenancy agreement is a sublease agreement;
 - (d) the landlord and tenant have agreed in writing that the tenancy is ended.
- (3) The director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.
- (4) *In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [Resolving Disputes],*
- (a) *grant an order of possession, and*
 - (b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

[emphasis added in italics]

Based on the undisputed testimony of TC, I find the Tenant owed the Landlord \$1,520.00 for rental arrears as of the date of the 10 Day Notice. Based on the foregoing, I find the Landlord has satisfied its onus to prove, on a balance of probabilities, that the 10 Day Notice was issued for a valid reason. TC stated the Tenant did not make any payments towards the rental arrears whatsoever for the rental arrears for April or May 2022.

I have reviewed the 10 Day Notice and find it complies with the section 52 form and content requirements. Accordingly, pursuant to section 55(4)(a) of the Act, I find the Landlord is entitled to an Order of Possession. However, as the Tenant has already vacated the rental unit, an Order of Possession is no longer required by the Landlord.

2. Monetary Order for Unpaid Rent:

Sections 26 of the Act state:

- 26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The 10 Day Notice stated the Tenant had rental arrears of \$1,520.00 for April and May 2022. Section 26(1) requires a tenant to pay the rent in full when it is due unless the tenant has a right under the Act to deduct all or a portion of the rent. There is no evidence before that the Tenant had any right to deduct all or a portion of the rent. As such, the Tenant must compensate the Landlord for the rental arrears of \$1,520.00. Pursuant to section 55(4)(b) of the Act, I order the Tenant pay the Landlord \$1,520.00 in satisfaction of the rental arrears owed. Pursuant to section 72(2)(b), the Landlord may deduct the Tenant's security and pet damage deposits totalling \$700.00 from the rental arrears owed by the Tenant, leaving a balance of \$820.00.

3. Reimbursement of Landlord's Filing Fee

As the Landlord has been successful in the Application, it may recover the \$100.00 filing fee for the Application from the Tenant pursuant to section 71 of the Act.

Conclusion:

I order that the Tenant pay the Landlord \$920.00, representing the following:

Description	Amount
Rental Arrears for April and May 2022, inclusive	\$1,520.00
Landlord's Filing Fee for Application	\$100.00
Less Tenant's Security and Pet Damage Deposits	-\$700.00
Total	\$920.00

This Monetary Order must be served by the Landlord on the Tenant and may be enforced in Provincial Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 7, 2022

Residential Tenancy Branch